

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 518 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1-5 No

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CHHOTALAL GIRDHARLAL GHEEWALA

Versus

DISTRICT PANCHAYAT

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Appearance:

MR AJ SHASTRI for Petitioner

NOTICE SERVED BY DS for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 28/04/98

ORAL JUDGEMENT

This revision application under Section 115 of C.P.C. is directed against the order dated 4.3.1998 passed by the Civil Judge (S.D.), Surat rejecting the petitioner's application Exh. 138.

The necessary facts are that the petitioner plaintiff took the subject premise for running of petrol pump of yearly rent of Rs. 1301/- from the erstwhile

District Local Board in November, 1958. Subsequent to this, the District Board was dissolved and District Panchayat Surat came into existence. The District Panchayat served a notice on the plaintiff petitioner calling upon them to handover the vacant possession of the premise. Therefore the plaintiff filed a suit being Regular Civil Suit No. 140 of 1971. The issues were framed by the learned Civil Judge but at this stage Small Causes Court came to be constituted at Surat and therefore the suit was transferred to the Small Causes Court where it was renumbered as Small Cause Suit No. 746 of 1975. The suit was dismissed by the Small Causes Court in the year 1977 and therefore appeal was preferred before the District Court at Surat which was registered as Regular Civil Appeal No. 61 of 1977. The appellate court came to the conclusion that the transfer of the suit by the Small Causes Court was not proper as with respect to properties of the District Panchayat, Bombay Rent Act was not applicable. In view of this, the Assistant Judge, Surat, by judgement dated December 1998 set aside the judgement and decree passed by the Small Causes Court and directed that the Civil Judge (S.D.) should proceed from the stage of framing of the issues. The said order was challenged before this court by way of revision which was registered as Civil Revision Application No. 624 of 1979. The said revision application was rejected by order dated 18.10.1982.

Though a direction was given to dispose of the suit within a period of three months nothing had happened and the petitioner plaintiff filed application Exh. 138 praying therein that in the interest of justice he should be allowed to lead evidence and further proceedings which had taken place before the Court of Small Causes will not be looked into. The said application came to be rejected by the impugned order dated 4.3.1998.

In spite of notice, none appears for the respondent. I have heard Mr. A.J. Shastri, learned counsel for the petitioner. It is not in dispute that the suit was filed in the year 1971. The issues were framed during the period 1971 to 1975. The suit was dismissed and on the direction of the appellate court the matter was remitted to the court of Civil Judge (S.D.). Looking to the time gap of more than 25 years, it is just and proper if the plaintiff petitioner is allowed to lead evidence. The evidence which has been recorded by the Small Causes Court cannot be obviously looked into as the appellate court has found that the said court had no jurisdiction at all. The court below ought to have looked into that much water has flown after the statement

was made by the petitioner for not leading oral evidence.

In view of the aforesaid, this revision application is allowed and the impugned order dated 4.3.1998 is quashed and set aside. The application Exh. 138 is granted. Rule made absolute.

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